IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 815 of 1985

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL MOTIBHAI KALIDAS

Versus

PATEL AMBALAL KALIDAS

Appearance:

1. First Appeal No. 815 of 1985
MR MC SHAH for Appellant No.
MR PRADEEP PATEL for Respondent No. 1
MR SM SHAH FOR MR BR PARIKH for Respondent No. 2-5

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 25/11/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

This First Appeal arises from the judgment and decree dated 6th February, 1985 passed by the learned Civil Judge [S.D.], Anand in Special Civil Suit No.182 of 1977.

2. The suit was filed by the respondent No.1 herein -Patel Ambalal Kalidas for partition of the suit properties claiming them to be belonging to the joint family comprising of plaintiff and five brothers including the appellant herein who is the eldest brother. During pendency of the suit, the dispute which is the subject matter of the suit, was referred to four Arbitrators, three of whom gave their award dated 10th September, 1982. However, one of the arbitrators appointed by the present appellant did not sign the award. The defendant No.2 filed an application Exh.70 for production of the award before the trial court and to pass decree in terms of the award. The appellant filed reply Exh.74 contending that the award was not an award in the eye of law. The trial court passed the order directing the arbitrators to produce the award before the Court. The appellant filed his objections. Ultimately after hearing the parties, the trial court rendered the judgment dated 6th February, 1985 for a decree in terms of the award. Hence, the present appeal came to be filed way back in the year 1985.

3. Initially, an internal arrangement was worked out during pendency of the appeal. However, on 8 / 9th October, 1997, (for short- 8.10.1997) all the parties to the appeal including the present appellant and respondent No.1 (the original plaintiff) entered into a compromise and submitted the consent terms to the effect that for the properties described in Para-3, 4, 5 & 7 of the consent terms, the properties be distributed as stated in the said paragraphs. Para-10 of the consent terms specifically stated as under :

"10. So far as the properties described in Para-3, 4, 5 & 7 have come into the share of the parties respectively and now there remains no dispute so far these properties are concerned."

Para-8 & 9 of the consent terms gave particulars of the properties for which the parties continue to have disputes and the said paragraphs read as under :

"8. Plot No.G of Survey No.71 of Village

Bakrol admeasuring 1144 sq.mtrs. which is a common plot yet remains to be the suit property and subject matter of the Appeal and premises Nos.1378/1, 1378/2, 1376/7, 1376/8 of village Bakrol and 5/6 | 10 and 5/6 | 13 of Anand town are still remains to be the suit property and the subject matter of the appeal. The amount of Rs.3,19,000/- deposited by the Appellant as a condition of stay is subject matter of dispute.

9. The land bearing Survey No.780/2, 781/1, 408 ABCD, 662/A, 651/2 and 52 sq.mtrs Khander of Anand are also still remained to be suit property and the subject matter of the appeal."

Para-11 of the consent terms specifically provides as under :

"11. The properties described in Para-8 and 9 are still in dispute and will be dealt with as per decision of the Hon'ble Court in the Appeal. All the parties will maintain status quo qua the properties mentioned in Para-8 & 9."

4. When the said consent terms were presented before the Court, the Court passed the order dated 20th October, 1997 in the following terms.

"Today upon request of Mr.P.J.Patel and Mr.Parikh, the matter was taken and the copy of the Consent Terms and the letter dated 13.10.97 purported to have been signed by one Pankaj Kantibhai Patel is placed on record. The Consent Terms pursis is recorded. The further appropriate order shall be passed along with the main appeal at the time of hearing of the main appeal. Expedite the First Appeal. Office is directed to notify the matter for the purpose of final hearing."

5. The matter reached hearing yesterday. After the hearing commenced, the learned advocates for the parties have today submitted consent terms dated 25.11.2004 to the effect that the disputes between the parties regarding properties described in Para-8 & 9 of the consent terms dated 8-10-1997 and also the other disputes referred to the arbitrators but not decided, are required to be decided by the trial court. The parties have also reiterated that the properties described in Para-3, 4, 5 and 7 of the consent terms dated 8-10-1997 shall be

treated as distributed to the parties to whom such properties are distributed as per the said consent terms dated 8-10-1997. The parties have also agreed to clarify Para-15 of the consent terms dated 8-10-1997 to provide that the land forming part of road of the width of 7.5 meters shall be treated as the common land, to be kept open, but the lands appurtenant to the super-structures on the land bearing Survey No.71 of Village Bakrol shall be treated as the lands belonging to the concerned parties to whom the super structures are allotted as per the consent terms dated 8-10-1997.

The parties have also agreed that in respect of the properties described in Para-8 & 9 of the aforesaid consent terms dated 8-10-1997,the parties will be at liberty to file pleadings before the trial court and also to lead documentary as well as oral evidence so as to enable the trial court to decide the suit regarding the properties described in Para-8 & 9 of the aforesaid consent terms in accordance with law.

The appellant also agrees to withdraw unconditionally Civil Suit No.43 of 2004 pending on the file of the learned Civil Judge (S.D.), Anand within a week from today.

6. The consent terms being submitted today are signed by Mr.M.C.Shah, learned advocate for the appellant, Mr.Pradeep Patel, learned advocate for respondent No.1 and Mr.Suresh M. Shah, learned advocate for respondent Nos.2 to 5. The consent terms are also signed by some of the parties who are present before the Court. Since the learned advocates for the parties state that they have authority to sign the consent terms and since, in substance, the consent terms, besides incorporating the consent terms signed by the all the parties on 8-10-1997 merely provide for remand of the matter regarding the disputed properties for fresh trial by the trial court in accordance with law, we have not deemed it necessary to have the consent terms signed by all the parties.

7. The aforesaid consent terms presented today are taken on record and with the consent of the parties, we partly allow the appeal by modifying the decree dated 6th February, 1985 passed by the Court of the learned Civil Judge (S.D.), Anand in Special Civil Suit No.182 of 1977 in terms of the consent terms dated 8 / 9th October, 1997 read with the consent terms filed today and referred to hereinabove. The above numbered Civil Suit shall stand restored to the file of the learned Civil Judge (S.D.),

Anand for the purpose of deciding the disputes regarding the properties mentioned in Paras-8 & 9 of the consent terms dated 8 / 9th October, 1997, as also the dispute which were raised before the arbitrators which remained undecided-concerning the movable and immovable properties along with the dispute about the accounts - all these disputes shall be decided by the Court of the learned Civil Judge (S.D.), Anand after permitting the parties to file their respective pleadings and after giving an opportunity to lead documentary as well as oral evidence and after hearing arguments of the respective parties and the trial court shall decide the suit regarding the aforesaid disputes in accordance with law and without being influenced by any of the observations made in this order or in the judgment giving rise to this appeal.

Since the suit was filed as far as back in the year 1977, the trial court shall give top priority to the suit and decide it as expeditiously as possible and preferably by 30th June, 2005 and in any case before 31st December, 2005. In order to ensure that the unnecessary time of the Court and the parties is not wasted in issuance and service of summons, we direct that the parties shall remain present before the trial court on 20th December, 2004 as already agreed by the parties in the consent terms also.

9. The Registry shall return the R & P of the Special Civil Suit No.182 of 1977 to the court of learned Civil Judge (S.D.), Anand along with the Writ of this Court forthwith and in any case so as to reach the said Court by 10th December, 2004.

Subject to the aforesaid directions, the first appeal accordingly stands disposed of.

[M.S.Shah, J.]

Date : 25.11.2004 [D.H.Waghela, J.]

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